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# Arbitration—Arbitrable Issue Present as to Content and Meaning of General Release

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but also from any supplement to it. Moreover, the Court held that petitioner, by participating in the arbitration proceedings, had waived any right to contend that the agreement did not provide for arbitration.

Section 1458 (1) of the Civil Practice Act clearly provides that an applicant, after having participated in the arbitration proceedings, can only challenge the award on certain enumerated grounds.[33] He cannot, however, contend that the dispute is not arbitrable. This appears to be based upon the proposition that once a party has ratified a contract, through his acceptance of its provisions, he cannot thereafter claim that the contract does not exist or that its provisions are invalid. Petitioner's motion to vacate, therefore, must be limited to one of the grounds enumerated in Section 1462(1)-(4) of the Civil Practice Act.[34]

Although Section 1462 (4) provides that an award may be vacated when the arbitrators exceed their power, the Court holds that the latter objection is applicable only where it can be said that the arbitrators have given "a completely irrational construction to the provisions in dispute and, in effect, made a new contract for the parties."[35] The agreement in dispute, although susceptible of different interpretations was reasonably interpreted by the arbitrators. Therefore, it cannot be said that the arbitrators have exceeded their power within the meaning of Section 1462 of the Civil Practice Act.

*J. D.*

ARBITRABLE ISSUE PRESENT AS TO CONTENT AND MEANING OF GENERAL RELEASE

On January 4, 1952, the parties, in *Bronston v. Glassman*,[36] entered into a written agreement whereby respondent undertook and agreed to render certain personal managerial and related services to petitioner in return for compensation. The agreement, which by its terms was to run to December 31, 1961, contained a broad arbitration clause. On May 29, 1959, a further agreement[37] was entered into between the parties hereto, *their wives* and *certain corporations*, which provided in essence for the exchange of general releases

33. N.Y. Civ. Prac. Act § 1458(1):
A party who has participated in the selection of the arbitrators or in any of the proceedings had before them may object to the confirmation of the award only on one or more of the grounds specified in subdivisions one, two, three and four of section fourteen hundred sixty-two. . . .

34. Subdivisions 1 through 4 of Section 1462 provide for the vacation of an arbitration award only where it has been shown that there was: 1) fraud in procuring the award; 2) partiality or corruption of the arbitrators; 3) misconduct of arbitrators; 4) or that arbitrators exceeded their powers.

35. National Cash Register v. Wilson, supra note 31 at 383, 208 N.Y.S.2d at 955.

36. 10 N.Y. 2d 158, 218 N.Y.S.2d 645 (1961).

37. The settlement agreement of May 29, 1959, contained the following provision: Except for the rights and obligations contained in this agreement, all other claims which any of the parties hereto may have against any other party hereto are released and forgiven and each of the parties hereto will deliver to each other parties hereto duly executed, standard form general releases excepting only rights under this agreement. Bronston v. Glassman, 13 A.D.2d 486, 488, 212 N.Y.S.2d 239, 241 (1st Dep't 1961).

" 'excepting only rights under this agreement.' "[38] A month later, and pursuant to the agreement of May 29, 1959, respondent and his wife executed a general release to petitioner and his wife, excepting only the obligation arising out of the May 29, 1959 agreement. Subsequently, respondent served a demand for arbitration under the provisions of the arbitration clause contained in the agreement of January 4, 1952. Petitioner sought to stay arbitration, contending that the agreement was terminated or cancelled by reason of the May 29, 1959 agreement and the subsequent release pursuant to that agreement. Special Term entered an order denying the petitioner's motion and the Appellate Division affirmed.[39]

The issue presented to the Court of Appeals then was whether an arbitrable issue was present as to the meaning and scope of the May 29, 1959 agreement, and the releases pursuant to that agrement, as to the rights and claims of the party litigants in the 1952 agreement. The dissent, per Judge Froessel, felt that the intent of the parties, as represented by the unambiguous language of the settlement agreement, to release their respective rights and claims under the 1952 agreement, especially their right to arbitration, was clear. Their feelings, as expressed by Justice Valente, dissenting in the Appellate Division, are that " 'If arbitration is to be permitted in this case, no release, irrespective of its clarity and unequivocal language, is safe from collateral attack by the mere assertion by a party that he did not intend to mean what the release says. We undermine the foundations of general releases if we permit arbitration here.' "[40]

The Court of Appeals, however, in a 4-3 decision affirmed the Appellate Division, thereby denying petitioner's motion for a stay. The majority held that "in view of the context in which the releases under consideration were drawn, it is clear that they are sufficiently dubious in context and meaning to require that the matter be submitted to arbitration."[41]

The view of the dissenting opinion appears more reasonable if, but only if, the settlement agreement, with its general and conclusive language, is examined independently of all other factors. But, if the agreement is considered "in view of the context" under which it was drawn, as the majority has done, sufficient doubt and ambiguity arise as to its intended application to the claims and rights of the parties to the 1952 agreement. For example, it appears that the participants in the 1959 agreement included not only the present litigants, who were the sole parties to the 1952 agreement, but also their wives and other corporations. It further appears that the 1959 settlement agreement did not

38. Ibid.
39. Ibid.
40. Supra note 37 at 160, 218 N.Y.S.2d at 646.
41. Ibid.

mention the 1952 agreement. Although the Court of Appeals opinion does not bring out these facts, the per curiam opinion by the Appellate Division does.[42]

*Bd.*

POWER OF ARBITRATOR TO AWARD DAMAGES FOR BREACH OF COLLECTIVE BARGAINING AGREEMENT

In *Publishers' Ass'n v. New York Stereo. U. No. 1*,[43] the Court of Appeals was called upon to determine whether an arbitration provision, embodied in a collective bargaining agreement between the parties, authorized the arbitrators to settle the question of damages. The provision in question provided that: " 'To this Committee [arbitration committee] shall be referred for settlement *any matter arising from the application of this agreement. . . .*' "[44] (Emphasis added.)

Although the defendant union concedes that the Committee has the power to determine whether a work stoppage engaged in by sixty stereotypes employed by plaintiff was a violation of the collective bargaining agreement between the parties, it challenges the further power of the arbitrators to decide the question of damages. The Court of Appeals expressed little hesitancy in affirming both the Special Term and the Appellate Division,[45] which had granted the plaintiff's motion to direct the union to proceed to an arbitration of the whole matter.

There is little doubt in New York today that the courts will, when faced with an arbitration clause of such general language as the present case, submit the question of damages to arbitration. For, as stated by the Court in the landmark case of *In re Marchant v. Mead-Morrison Mfg. Co.*:[46]

> Parties to a contract may agree, if they will, that any and all controversies growing out of it in any way shall be submitted to arbitration. If they do, the Courts of New York will give effect to their intention. A submission so phrased, *or in form substantially equivalent*, does not limit the authority of the arbitrators to an adjudication of the breach. It is authority to assess the damages against the party in default (*Matter of Gen. Footwear Co. v. Lawrence Leather Co.*, 252 N.Y. 577).[47] (Emphasis added.)

In an attempt to stamp a restrictive intent upon the general language used in the arbitration clause, the defendant reminded this Court of the substantive rule that an unincorporated association cannot be held liable except on proof which would make all the members liable individually. "The union says that, with this statutory immunity in existence, the intent of this agreement could not have been to authorize an award of damages for a violation which involved only about 60 of the union's 1,100 members."[48]

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42. Bronston v. Glassman, supra note 36 at 487, 212 N.Y.S.2d at 240.
43. 8 N.Y.2d 414, 208 N.Y.S.2d 981 (1960).
44. Id. at 416, 208 N.Y.S.2d at 982.
45. 10 A.D.2d 557, 197 N.Y.S.2d 402 (1st Dep't 1960).
46. 252 N.Y. 284, 169 N.E. 386 (1929).
47. Id. at 298-299, 169 N.E. at 391.
48. Publishers' Ass'n v. New York Stereo. U. No. 1, supra note 43 at 418, 208 N.Y.S.2d at 984.